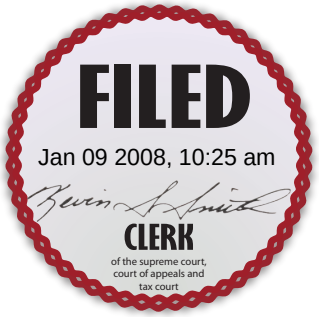

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IN THE
COURT OF APPEALS OF INDIANA

KIMBALL INTERNATIONAL, INC., d/b/a NATIONAL OFFICE FURNITURE,	)	
Appellant-Plaintiff,	)	
vs.	)	No. 10A04-0704-CV-193
ENVIRONETICS, INC., and MONTEIRO DEVELOPMENT, INC.,	)	
Appellees-Defendants.	)	

APPEAL FROM THE CLARK CIRCUIT COURT
The Honorable Daniel Donahue, Judge
Cause No. 10C01-0603-CC-135

January 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kimball International, Inc., d/b/a National Office Furniture (Kimball), appeals the trial court's order dismissing its complaint against appellee-defendant Monteiro Development, Inc. (MDI), for lack of personal jurisdiction. Kimball argues that the trial court had personal jurisdiction over MDI pursuant to a forum selection clause contained in a contract signed by MDI. Alternatively, Kimball contends that the trial court should have permitted the parties to engage in discovery before ruling on the personal jurisdiction issue. Finding that MDI is bound by the forum selection clause and that the trial court may exercise personal jurisdiction over MDI, we reverse and remand for further proceedings.

FACTS

Kimball, an Indiana corporation, alleges that it shipped and delivered goods to appellee-defendant Environetics, Inc. (Environetics), on credit and that Environetics has not paid for the goods. As security for Environetics's promise to pay for the goods, Kimball obtained a Corporate Unconditional Guaranty (Guaranty) of payment from MDI. The relationship between MDI and Environetics is not revealed by the record. The Guaranty, executed on August 23, 1990, provides in pertinent part as follows:

> FOR VALUE RECEIVED and in consideration of credit given . . . to Environetics, Inc. (hereinafter referred to as DEBTOR), by [Kimball], . . . the undersigned hereby unconditionally guarantees the full and prompt payment, when due . . . of any and all past, present or future accounts, notes, bills, or invoices rendered to DEBTOR by KIMBALL for merchandise, goods or wares sold by KIMBALL to DEBTOR . . . .
>
> ***

> The term undersigned as used herein shall mean the signer or signers hereof . . . .
>
> ***
>
> This Guaranty and all rights granted hereunder shall be governed by the laws of the State of Indiana. DEBTOR agrees that any and all disputes, controversies, or claims arising hereunder shall be brought and maintained only in the appropriate court located in the State of Indiana.
>
> ***
>
> Witness the hands and seals of the undersigned the day and year first above written.
>
> MDI (Monteiro Development, Inc.) [typed onto the form]
>
> DEBTOR (NAME OF COMPANY)
>
> SIGNED: [signature of Jorge C. Monteiro]
>
> PRINTED: Jorge C. Monteiro

Appellant's App. p. 59-61.

Environetics and MDI are Florida corporations. MDI, a general contractor that provides construction services, does not have an agent for service of process in Indiana and has never conducted business in Indiana. Moreover, MDI neither has agents, representatives, dealers, nor independent contractors located in Indiana and has never owned or leased any real estate here.

On March 3, 2006, Kimball filed a complaint in Clark County against Environetics and MDI, seeking to recover $31,124.35, which Kimball alleges is the sum owed by Environetics for the goods provided by Kimball. On September 20, 2006, MDI filed a motion to dismiss for lack of personal jurisdiction, arguing that MDI lacked minimum contacts with this State. Kimball responded that personal jurisdiction existed based on

the Guaranty and the course of dealings between Kimball and MDI. Following a hearing, the trial court denied the motion to dismiss on December 5, 2006. The following day, MDI filed a post-hearing submission arguing that an ambiguity in the Guaranty negated the validity of the forum selection clause. On December 7, 2006, the trial court entered an order summarily dismissing MDI for lack of personal jurisdiction. Kimball now appeals.

DISCUSSION AND DECISION

Kimball argues that the trial court erroneously concluded that it does not have personal jurisdiction over MDI. Personal jurisdiction is a question of law, reviewed de novo, and it "either exists or does not." Grott v. Jim Barna Log Sys.-Midwest, Inc., 794 N.E.2d 1098, 1102 (Ind. Ct. App. 2003). When a defendant attacks the jurisdiction over his person, he bears the burden of proof upon that issue by a preponderance of the evidence. Id. Parties may consent to the exercise of personal jurisdiction by courts that otherwise might not have such jurisdiction. Mechs. Laundry & Supply, Inc. v. Wilder Oil Co., Inc., 596 N.E.2d 248, 251 (Ind. Ct. App. 1992). Forum selection clauses in contracts are enforceable "if they are reasonable and just under the circumstances and there is no evidence of fraud or overreaching such that the agreeing party, for all practical purposes, would be deprived of a day in court." Id. at 250.

MDI does not contend that the enforcement of the Guaranty's forum selection clause would be unreasonable or unjust, nor does it argue that there is evidence of fraud or overreaching. Instead, it contends that the contract is ambiguous and, as such, must be construed against Kimball as the drafter. See MPACT Constr. Group, LLC v. Superior

Concrete Constructors, Inc., 802 N.E.2d 901, 910 (Ind. 2004) (holding that "[w]hen there is ambiguity in a contract, it is construed against its drafter"). Where a contract is ambiguous, we will consider all relevant evidence, including extrinsic evidence, to discern the meaning of the document's provisions. Shorter v. Shorter, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006). Ultimately, our goal is to determine and effectuate the parties' intent in crafting those provisions. Id. at 383-84.

Here, it is undisputed that MDI guaranteed the debt of Environetics pursuant to a Guaranty that is governed by Indiana law. The "Debtor," in one place identified as Environetics—which was not a party to the Guaranty—and in another place identified as MDI, agreed to litigate all claims arising from the Guaranty in Indiana. Appellant's App. p. 59-61. We simply cannot conclude that the parties intended for claims against Environetics to be litigated in Indiana but for claims against MDI, which directly relate to the claims being litigated in Indiana, to be litigated in Florida. That would not be an efficient use of the judicial system or the parties' respective resources. In signing the contract and guaranteeing Environetics's debt, MDI implicitly and necessarily agreed to litigate claims arising from that debt in Indiana. Ultimately, therefore, we conclude, based on the language of the contract, that the parties intended for MDI to be bound by the forum selection clause. The trial court, therefore, erroneously concluded that it did not have personal jurisdiction over MDI.

The judgment of the trial court is reversed and remanded for further proceedings.

DARDEN, J., and BRADFORD, J., concur.